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BULLETIN

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Subject: SALES TAX AND ACV CLAIMS

Recently, an Insurance Law Report distributed by a Seattle law firm expressed the opinion that there is no good reason for including sales tax in actual cash value calculations. It further asserted that the Insurance Commissioner "supports the view that sales tax should not be paid in an ACV loss," except with respect to the settlement of first party automobile total losses. As most insurers probably know, that view is not supported by the commissioner.

WAC 284-30-390 specifically requires the payment of all applicable taxes, license fees and other fees incident to transfer of evidence of ownership, in only first party, private passenger automobile total loss situations. It does not follow, however, that taxes need not be considered in other cases, whether the loss is total or partial or owed to a first or third party claimant.

An annotation in 61 ALR2d 713, stresses the fact that variations in the types of property and the conditions under which they are destroyed prevent adoption of any single test for all cases. The cost of reproduction or replacement is frequently considered in determining the actual cash value of insured property. In states, such as Washington, which follow the so-called "broad evidence rule," courts will receive any evidence logically tending to establish actual cash value.

In many cases, the cost of repairing and restoring a building or other object to the condition it was in before the loss is not only material, but is the most persuasive evidence of the amount of loss for which the insurer is liable. Obviously, such costs will include sales tax.

The actual cash value in the hands of a claimant will often include freight and handling costs with the purchase price of a replacement. In Washington state, sales tax amounts to a similar and substantial sum in most settlements. Its importance cannot be ignored. An insurer must deal with taxes and license fees in good faith. If we find that is not being done, additional rules will follow.

DICK MARQUARDT
Insurance Commissioner